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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,621	04/14/2005	David S. Foell	1200210-IN US	8426
35227	7590	09/24/2008	EXAMINER	
POLYONE CORPORATION			BUCKLE JR, JAMES J	
33587 WALKER ROAD			ART UNIT	PAPER NUMBER
AVON LAKE, OH 44012			3633	
MAIL DATE		DELIVERY MODE		
09/24/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/531,621	<b>Applicant(s)</b> FOELL ET AL.
	<b>Examiner</b> JAMES J. BUCKLE JR	<b>Art Unit</b> 3633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 August 2008.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-18 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 May 2008 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-146/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

The following is a Non-Final Office action in response to communications filed on May 13, 2008. Claims 1, 3 -4, 6-7, 11-12, and 14-15 have been amended. Therefore, claims 1-18 are pending and addressed below.

#### ***Response to Amendment***

Applicant's amendments to drawings and the claims are sufficient to overcome the drawing and claim objections set forth in the previous office action.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

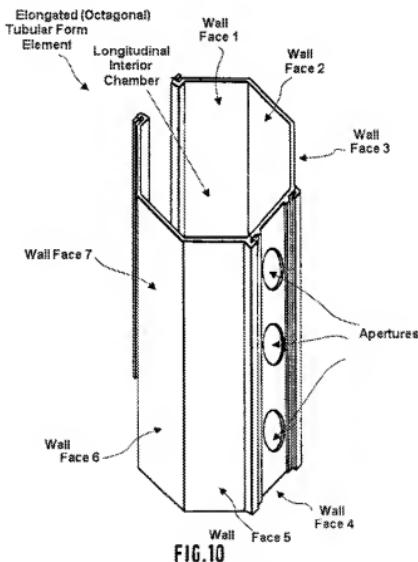
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nessa et al. (U.S. Patent No. 5,216,863) in view of Strabag (EP02244851).

4. Regarding claim 1, Nessa et al. discloses an apparatus comprising:
  - a. "an elongated octagonal tubular form element, wherein the tubular form element includes a tubular boundary of seven wall faces...the tubular boundary bounds a longitudinal interior chamber" ("Wall Face 1...7", "Longitudinal Interior Chamber", Examiner amended Fig.10)
  - b. "...at least one female engagement portion..." which is adapted to receive a male engagement portion. ("Female Engagement Portion 1...8", Examiner amended Fig.2)
  - c. "...the tubular form element includes at least one male engagement portion extending outwardly of the tubular boundary." ("Male Engagement Portion", Examiner amended Fig.2)

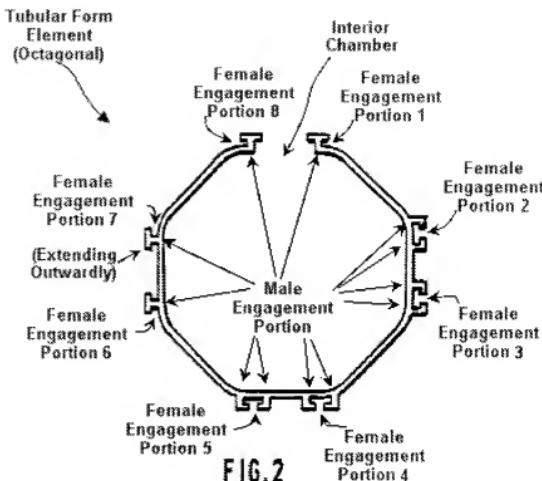
Nessa et al. discloses the at least one female engagement portion located at a vertex of adjacent wall faces, but does not distinctly disclose the at least one female engagement portion that includes an opening at the tubular boundary and extends into the longitudinal interior chamber of the tubular form element.

However, Strabag teaches (Item 17, Fig.3) the mating of a male engagement portion with a female engagement portion that occurs internally at an opening of a tubular boundary as alternative way to securely receive a male engagement portion that results in no new or unpredictable result. Therefore, at the time the invention was made, it would have been obvious to one having ordinary skill in the art to have modified the tubular form element disclosed by Nessa et al. with

the female engagement portion taught by Strabag as an alternative way to securely receive a male engagement without any new or unpredictable results. The Examiner asserts that the female engagement portion is located at a vertex as a portion of the female engagement starts at the vertex and therefore is considered to be located, in part, at the vertex.



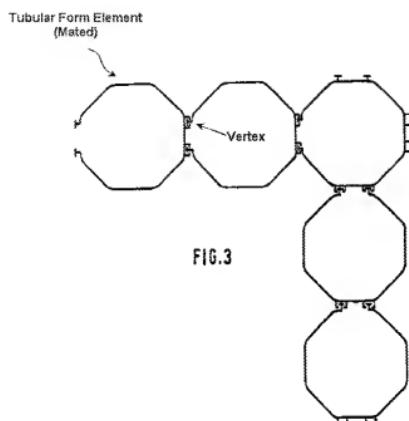
Reproduced from U.S. Patent No. 5,216,863 (Examiner amended)



Reproduced from U.S Patent No. 5,216,863  
(Examiner Amended)

5. Regarding claims 2, 3 and 11, Nessa et al. in view of Strabag further discloses a octagonal tubular form element as well as other geometries (Column 4, lines 6-10) that has at least five female engagement(Claims 3 and 11), which is considered to be of "symmetrical permitting geometry" (Claim 2). ("Female Engagement Portion1...8", Examiner amended Fig.2)
6. Regarding claims 4 and 12, Nessa et al. in view of Strabag further discloses a octagonal tubular form element that has at least two male engagement portions. ("Male Engagement Portion", Examiner amended Fig.2 and 10)

7. Regarding claims 5 and 13, Nessa et al. in view of Strabag further discloses a tubular form element that has apertures in at least one face of the form element ("Apertures", Examiner amended Fig.10)
8. Regarding claims 6 and 14, Nessa et al. in view of Strabag further discloses a tubular form element that is "operative" to mate with another tubular form element where one female engagement portion of one tubular form element mates with one male engagement portion of another tubular form element internally of the tubular boundary. (Examiner amended, Fig.3) The examiner considers the tubular boundary to extend as far out as the outermost portions of the male and female engagement portions.
9. Regarding claims 7 and 15, Nessa et al. in view of Strabag further discloses an apparatus wherein "the male engagement portion of one tubular form element and the female engagement portion of a second tubular form element occurs at a vertex of the second tubular form element internally of the tubular boundary." ("Vertex", Examiner amended Fig.3) The examiner considers the tubular boundary to extend as far out as the outermost portions of the male and female engagement portions.



Reproduced from U.S. Patent No. 5,216,863 (Examiner Amended)

10. Regarding claims 8 and 16, Nessa et al. in view of Strabag further discloses mated multiple tubular form elements that are "operative" to form a wall structure. (Column 3, lines 49-55)
11. Regarding claims 9 and 17, Nessa et al. discloses an apparatus the comprises multiple wall structures that form at least one wall of a building (Column 3, lines 28-30).
12. Regarding claims 10 and 18, Nessa et al. in view of Strabag further discloses an apparatus comprising insulation, reinforcing bars and concrete with in the multiple wall structures (Column 4, lines 31-37). Concrete is considered to be a form of insulation.

***Response to Arguments***

13. Applicant's arguments, see remarks bold text on page 6 and 7, filed 5/13/2008, with respect to the rejection(s) of claim(s) 1-18 under ***35 USC § 102*** have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of an additional reference under***35 USC § 103*** that teaches a female engagement portion the extends into an interior chamber of a tubular element.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.  
  
Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES J. BUCKLE JR whose telephone number is (571)270-3739. The examiner can normally be reached on Monday-Thursday, Alternating Friday 7:30am-5:00pm.  
  
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3633

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian Glessner  
Examiner  
Art Unit 3633

JJB

/Brian E. Glessner/  
Supervisory Patent Examiner, Art Unit 3633